IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1399 of 1994

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJKOT MUNICIPAL CORPORATION & 1 - Petitioner(s)

Versus

BHAGWANJI C PATEL - Respondent(s)

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Appearance :

MR G.RAMAKRISHNAN for MR BP TANNA for Petitioner No(s).: 1,2.

MR MEHUL S SHAH for Respondent No(s).: 1.

MR SURESH M SHAH for Respondent No(s).: 1.

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CORAM :HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 13/07/2005

ORAL JUDGMENT

This Revision Application arises from the Regular Civil Suit No.10/1989 pending in the Court of learned Civil Judge (S.D.), Rajkot.

The respondent-plaintiff has instituted the said Suit No.10/1989 against the Rajkot Municipal Corporation and its officer (hereinafter referred to as **"the Corporation"**) for permanent injunction restraining the Corporation from demolishing the construction made on the suit land. According to the plaintiff the suit land belonged to one Savjibhai Jivabhai Patel. Under agreement for sale dated 8th May, 1970 the said Savjibhai had agreed to sell the suit land to the plaintiff and had put the plaintiff in possession of the suit land. Since then, the plaintiff had raised construction over the suit land and had been residing there. The plaintiff alleged that the Corporation treated the said construction as illegal and was likely to demolish the same. The suit has been contested by the Corporation vide written statement Exh.12. It is denied that the plaintiff had made any construction in the year 1970 as alleged. It is stated that the plaintiff was making a new construction illegally without the permission and that due notice and injunction was served upon the plaintiff.

Pending the suit, by interim order dated 23rd March,

1990 made below application Exh.5, the learned Civil Judge issued interim injunction to maintain status quo. Feeling aggrieved, the Corporation preferred Civil Misc. Application NO.99/1990 in the Court of learned District Judge, Rajkot. The learned Joint District Judge, Rajkot, by order dated 13th January, 1993, dismissed the Appeal. Feeling aggrieved, the Corporation has preferred the present Revision Application under Section 29(2) of the Rent Act.

The Revision Application was admitted to final hearing on 23rd December, 1994 (Coram: N.J.Pandya, J.). The Court also stayed the operation of the order under challenge.

It should be noted at the outset that this Revision Application is preferred essentially under Section 115 CPC. In view of the amendment of Section 115 CPC under Act No.46 of 1999, the Revision Application under Section 115 CPC against an interim order shall not be maintainable.

The Revision Application is accordingly dismissed.

Rule is discharged. The parties shall bear their own cost.

As the interim stay granted on 23rd December, 1994 has been operating for past 11 years the same shall continue to operate pending the suit. The suit shall be decided expeditiously. The Registry shall return the records and proceedings to the Court below forthwith.

(Ms. R.M.Doshit, J.)

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